IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2084 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO LTD - Appellant(s)
Versus
HETAL KHUSHALBHAI RATHOD & 1 - Defendant(s)

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Appearance :

MR HM BHAGAT for Appellant(s) : 1,MS LILU K BHAYA for Appellant(s) : 1,
MR RD DAVE for Defendant(s) : 1,
MR HS MUNSHAW for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 05/03/2007

ORAL JUDGMENT

The New India Assurance Co. Ltd., has challenged the award passed by Motor Accident Claims Tribunal [Main], Bhavnagar, dated

26/11/1996 made in M.A.C. Petition No. 140 of 1992, whereby the original claimant i.e., respondent no. 1 has been awarded a sum of Rs.75,000/- together with 15% interest and the proportionate costs. The Tribunal has directed that if the amount is deposited within six months, the rate of interest would be 12%. In this appeal, the appellant has challenged the award on two counts, namely that the driver of the offending vehicle did not possess valid licence on the date of accident and, therefore, insurance company's liability was not there and secondly that the quantum of compensation is on higher side.

2. The accident in question occurred on 17/10/1991 around 6.00 p.m. Near a place called Ghogha Circle in the City of Bhavnagar. On that day respondent no. 1 was riding on her Kinetic Honda scooter bearing Registration No. GJ-4-A-2112. She was accompanied by her friend Ameeben. When she had barely started on a scooter, she was knocked down by the jeep car belonging to Gujarat Maritime Board – respondent no. 2 herein. As a result of this, she sustained serious injuries. Her teeth were broken and the lips were cut. She had also sustained fracture of left kneecap. She was admitted in the hospital of Dr. Prashant Vora, Orthopaedic Surgeon. She, therefore, filed the aforesaid claim petition for claiming compensation of Rs.75,000/-. In the petition she averred that original opponent no. 1, the driver of the offending vehicle, namely jeep bearing registration No. GJ-4-9056 drove the vehicle in rash and negligent manner and caused the accident. It appears that subsequently the driver was

deleted from the proceedings.

2.1. The claim was resisted by respondent no. 2 by filing written statement at Exh. 17. All the averments made in the petition were denied. So far as the driver of the offending vehicle was concerned, surprisingly ignorance was pleaded whether he was driver employed in the office of respondent no. 2.

2.2. So far as the original opponent no. 3 i.e., present appellant – the insurance company is concerned, it filed written statement at Exh. 32. Its main grievance was that it was never intimated about the accident by the insured and, therefore, there was no liability to indemnify the insured. On the facts of the case, it denied the averments made in the petition.

2.3. At the hearing before the Tribunal, the respondent no. 1 led evidence. She examined herself and deposed that because of the rash and negligent act of the driver of the offending vehicle, she has sustained serious injuries. On the aspect of negligence, the Tribunal has adequately considered the evidence adduced before it and has found that the accident occurred solely due to the rash and negligent act of the driver of the offending vehicle. This finding is not challenged in this appeal. Hence, there is no need for me to disturb the same.

3. It is submitted by Miss. Bhaya learned advocate appearing for the appellant that since the driver of the offending vehicle did not hold valid licence on the date of accident, the insurance company was not liable to satisfy the award. She has further submitted that the quantum of compensation is excessive and it is required to be reduced. Lastly, she has submitted that the proceedings were filed in the year 1992, however, the insurance company was joined as party – opponent only in the year 1996. No intimation about the accident as well as about lodging of the proceedings was given to it by the insured. She has, therefore, submitted that the insurance company cannot be burdened with the interest for a period of four years i.e., from 1992 to 1996.

3.1. As against that, Mr. RD Dave, learned advocate for respondent no. 1 and Mr. HS Munshaw, learned advocate for respondent no. 2 have supported the judgment.

4. Having considered the aforesaid submissions and having gone through the record and proceedings of the case, there is no doubt in my mind that the accident occurred solely due to negligence of driver of respondent no. 2. Respondent no. 2 has not been able to establish that he was not in its employment on the date of accident. It is also not disputed that respondent no. 1 sustained serious injuries in the accident. The question is whether the driver held valid licence to drive jeep car on the relevant date. According to the

insurance company, he did not possess it. This submission of Miss Bhaya cannot be accepted. It is time and again said by this Court as well as the Apex Court that the burden to prove absence of valid licence is on the party taking up such defence. In the instant case, no such evidence has been led by appellant. On the contrary, it appears that licence of the concerned driver is brought on record. In view of the same, I do not find any merit in the submission.

4.1. So far as the quantum of compensation is concerned, Miss Bhaya has assailed it on the ground that under the head of loss of prospective income, award is very high. According to her, without any hesitance the Tribunal has held the income of respondent no. 1 at Rs.3,000/- per month instead of Rs.1,500/- per month. The evidence shows that she was studying in the diploma course in Fashion Designer. It is true no material is brought on record which could give some idea about her prospective income. However, the fact remains that she was prosecuting her studies on a line which has subsequently proved to be quite good. She has also produced on record the certificate regarding she having appeared in the examination of Diploma in Costume Designer. It is a mark-sheet which is at Exh. 29. This confirms the say of respondent no. 1 about her study in Fashion Designer. May be that; considering the fact that the accident is of the year 1991, the Tribunal has taken the income of respondent no. 1 slightly on higher side, but that would not make me interfere with the said finding.

4.2. So far as the other heads are concerned, especially the head of pain, shock and suffering, the amount appears to be quite proper. She has sustained fracture of kneecap. There was disfigurement of knee and she had lost her teeth also and for that she was not able to chew the food properly. Because of the injury to knee-cap she was also not in a position to climb stair-case and walk properly. Doctor assessed the permanent disability at 15%. The Tribunal has assessed it at 7.5% in respect of the entire body. In view of the same, by no stretch of imagination it can be said that the compensation awarded under the head of pain, shock and suffering is on higher side. Therefore, by and large, the quantum of compensation appears to be just and proper.

4.3. So far as the last submission of Miss Bhaya is concerned, it appears from the record that right from the beginning the stand of the insurance company was that it was not intimated about the accident by the insured in time. It also appears that it was not joined as party till the year 1996. To that extent the insured seems to have failed in its duty and the contractual obligation. Therefore, the grievance made by the insurance company through Miss Bhaya appears to be justified. However, I do not give any direction on that count in this judgment. If the insurance company so chooses it can resort to the remedies available under law against the insured.

5. In the result, I do not find any merit in this appeal and it is dismissed.

The Tribunal is directed to disburse the amount deposited by the insurance company, in favour of respondent no. 1 i.e., original claimant, by account payee cheque together with interest accrued thereon.

Registry is directed to re-transmit the R & P to the concerned Tribunal forthwith.

[Akshay H Mehta, J.]

* Pansala.